

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

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**IN RE: YASMIN AND YAZ  
(DROSPIRENONE) MARKETING, SALES  
PRACTICES AND PRODUCTS LIABILITY  
LITIGATION**

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)  
) **3:09-md-02100-DRH-PMF**  
)  
) **MDL No. 2100**  
)

**This Document Relates to:**

*Kristi McCall v. Bayer HealthCare  
Pharmaceuticals Inc., et al.*

No. 3:11-cv-12535-DRH-PMF

*Michelle Payne, et al. v. Bayer HealthCare  
Pharmaceuticals Inc., et al.*

No. 3:10-cv-10268-DRH-PMF

*Jacqueline Randall v. Bayer HealthCare  
Pharmaceuticals Inc., et al.*

No. 3:11-cv-10236-DRH-PMF

**ORDER DISMISSAL WITH PREJUDICE**

**HERNDON, District Judge:**

On January 21, 2016, Bayer moved to dismiss the claims of the above captioned plaintiffs, with prejudice, pursuant Case Management Order 78 (“CMO 78”). None of the above captioned plaintiffs responded to the subject motion to dismiss. Under the Court’s Local Rule 7.1, plaintiffs’ failure to file a timely response is deemed an admission of the merits of the motion. SDIL LOCAL RULE 7.1(c).

CMO 78 establishes a procedure to assure that plaintiffs who choose to litigate ATE injury claims act to preserve their medical records. CMO 78 applies to all Eligible Claimants as defined in the ATE Master Settlement Agreement who elect not to participate in the voluntary ATE Resolution Program.

Pursuant to CMO 78, a plaintiff must send document preservation notices to certain pharmacies, medical facilities, and doctors (*id.* § I.A ). They must also provide Bayer with a statement verifying the notices were sent, the names and addresses of all individuals or entities to which notices were sent, and copies of the notices (*id.* § I.C). If plaintiffs do not comply by a deadline set by the CMO, Bayer must send a letter giving the plaintiff 20 days to cure the deficiency. *Id.* § I.D. If the plaintiff still does not comply, Bayer shall file a Motion with the Court listing plaintiffs who failed to cure deficiencies within the Cure Period and whose cases should therefore be dismissed with prejudice. *Id.* Plaintiff shall have 30 days to respond from the date of the filing of the Motion. *Id.* **“Any Plaintiff’s failure to respond within the specified period shall lead to the dismissal of the Plaintiff’s case with prejudice,** the parties to bear their own costs, except for good cause shown.” *Id.* (emphasis added).

As outlined in Bayer’s motion to dismiss, the above captioned plaintiffs are subject to the requirements of CMO 78 and are not in compliance with the same. Accordingly, after following the procedures required under CMO 78, Bayer filed the subject motions to dismiss. The above captioned plaintiffs failed to file an opposition to Bayer’s motion to dismiss. Therefore, as provided for in CMO 78, the above captioned actions must be dismissed with prejudice.

The Court therefore **GRANTS** the motions to dismiss the claims of the above captioned plaintiffs. The claims of the above captioned plaintiffs are

**DISMISSED WITH PREJUDICE. The Court DIRECTS the Clerk to enter judgment.**

**IT IS SO ORDERED.**

**Signed this 1st day of March, 2016.**

*David R. Herndon*



Digitally signed by  
Judge David R.  
Herndon  
Date: 2016.03.01  
10:56:09 -06'00'

**United States District Court**